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09/808,848	03/15/2001	Srinivas Gutta	US010042	5264

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EXAMINER

KIM, PAUL L

ART UNIT PAPER NUMBER

2857

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/808,848

Applicant(s)

GUTTA ET AL.

Examiner

Paul L Kim

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13, 14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Oka et al.

With regard to claim 13, Oka et al teaches a method of monitoring comprising the steps of: generating a first signal indicative of a status of a person (col. 5, lines 28-30), detecting an event requiring the attention of a remote supervisor (col. 11, lines 49-52), transmitting at least a portion of the first signal to the remote supervisor as a result of the detecting (col. 6, lines 35-40), and the step of detecting includes detecting behavior of a person other than a person being tested (fig. 1, part 48 and col. 6, lines 3-5).

With regard to claim 14, Oka et al teaches transmitting an electromagnetic signal including video data (fig. 1, part 46 and col. 7, lines 7-12).

With regard to claim 18, Oka et al teaches the step of detecting a voice signature (col. 7, lines 13-15).

With regard to claims 19, Oka et al teaches detecting a failure to generate detectable activities (col. 3, lines 66+).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Kim.

With regard to claims 1 and 8, Harrison teaches a device for monitoring people comprising: a controller programmed to receive a monitor signal from an environmental monitor in a monitored zone (fig. 1, parts 11-16), the controller being programmed to classify an alarm condition attributed to the person to produce class data (col. 4, lines 44-49), and generating an alarm signal (col. 3, lines 37-41) including a portion of the monitor signal prior to or after an incidence of the alarm condition (col. 3, lines 34-37 and col. 5, lines 41-51).

Harrison, however, does not teach classifying an alarm condition *threatening* to the person. Kim teaches a remote infant monitoring system that classifies an alarm condition threatening to the infant (abstract). Since Harrison and Kim are both within the art of remotely monitoring people for an alarm condition, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Harrison, so that a threatening condition can be

monitored, as taught by Kim, so as to seek the benefit of enhanced system flexibility.

With regard to claims 2 and 9, Harrison teaches the monitor and alarm signal including video data (col. 5, lines 2-5).

With regard to claim 3, Harrison teaches the recognition of a specific person in a monitored area and the alarm recognition of the specific person (col. 10, lines 64+). Although Harrison does not specifically mention recognition of faces, it is inherent that recognition of specific people would have to take facial features into account.

With regard to claims 4 and 5, Harrison teaches the controller programmed to solicit an action by an occupant (col. 5, lines 9-12).

With regard to claim 6, Harrison teaches the controller programmed to recognize a speaker's voice (col. 4, lines 28-30).

5. Claim 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Corn.

Harrison teaches the sensors of the monitoring system having the ability to sense variables that a user chooses to employ (col. 7, lines 5-10), but does not teach detecting a lapse of breathing in a person. Corn teaches a monitoring system that detects a lapse of breathing in a person (col. 2, lines 39-42). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Harrison so that the intelligent area monitoring device can detect a lapse of breathing in a person, as taught by Corn, since the monitoring system of

Harrison already consists of a sound and vibration detector that can be programmed by the user to detect any variety of variables.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen in view of Oka et al.

With regard to claims 10 and 11, Jacobsen et al teaches a monitoring system comprising: a controller receiving a sensor signal (fig. 2), *at least one* sensor that generates a first and second signal responsive to a first state of a patient (fig. 1, part 22) and a second state of another patient (fig. 1, part 14), and the controller generating a first and second alarm signal when they are outside a specific range (col. 5, lines 7-14).

Jacobsen et al, however, does not specify one of the two people monitored being a *caretaker* of a person. Oka et al teaches a medical communications system in which a caretaker as well as a patient is being monitored (fig. 1, parts 18 and 48). Since Jacobsen et al and Oka et al are both within the art of monitoring people, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Jacobsen et al, so that one of the two people being monitored is a caretaker, as taught by Oka et al, so as to derive the benefit of improved system flexibility.

With regard to claim 12, Jacobsen et al teaches the controller being programmed to generate a message to a patient when the first state is outside the first range (abstract).

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oka et al in view of Corn.

Oka et al teaches detecting blood pressure levels of a patient but does not teach detecting a lapse of breathing in a person. Corn teaches patient monitoring system that detects a lapse of breathing (col. 1, lines 19-25 & col. 2, lines 39-42). Since both Corn and Oka et al are both within the art of patient monitoring for defects, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Oka et al, so that the patient monitoring system detects a lapse of breathing, as taught by Corn, in order to be able to detect a wide variety of disorders with a patient.

8. Claims 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oka et al in view of Lambert.

Oka et al teaches a method of monitoring a person comprising: generating a first signal indicative of a status of a person (col. 5, lines 28-30), detecting an event requiring attention of a remote supervisor (col. 11, lines 49-52), and transmitting at least a portion of the first signal to the remote supervisor as a result of the detecting (col. 6, lines 35-40).

Oka et al teaches detecting video and audio signals of the patient, but does not specify classifying a predefined pattern of the signals. Lambert teaches a face recognition system that uses pattern recognition to recognize images of people (abstract). Since both Lambert and Oka et al are both within the art of human monitoring, it would have been obvious to one of ordinary skill in the art,

at the time of the invention, to modify Oka et al, so that the monitoring system has a pattern recognition feature, as taught by Lambert, so as to receive the benefit of highly accurate patient analysis.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with regards to claims 1-9 and 13-19, filed June 18, 2003, have been fully considered but they are not persuasive. With regard to arguments on the bottom of page 3, the recitation that "a device for monitoring a first person *requiring supervision*" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). In this case, the limitation "a device for monitoring a first person *requiring supervision*" was not found in the body of the claim and therefore cannot be given patentable weight.

With regard to arguments on page 9, Oka et al clearly teaches detecting behavior other than the person in same environment (col. 6, lines 35-40). In response to Applicant's argument that claim 13 does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e.,) are not stated in the claims – "monitoring the state of a caregiver". It is the claims that define the claimed invention, and it is the claims, not specifications that are

Art Unit: 2857

anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ 2d 1064 (1988).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hinkle teaches a health monitoring system in which more than one patient is monitored over a computer network.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 703-305-7468. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-4440 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK  
August 25, 2003

  
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